

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7975 of 1997

with

SPECIAL CIVIL APPLICATION No 8733 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

RAHIMBHAI SULTANBHAI PALEJA

Versus

LABEL LEMINATES

Appearance:

1. Special Civil Application No. 7975 of 1997
MR HK RATHOD for Petitioner
NANAVATI ASSOCIATES for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2
2. Special Civil Application No 8733 of 1997
NANAVATI ASSOCIATES for Petitioner
NOTICE SERVED for Respondent No. 1
MR HK RATHOD for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

ORAL JUDGEMENT

These two petitions are filed respectively by the employees and employer to challenge the award of the Labour Court, Rajkot in Reference No.1293/86 to 1308/86. As these two petitions are arising from one and the same award, they are heard together and are being disposed of by this common judgment.

2. The petitioners in SCA No.7975 of 1997 were working with the respondent no.1-Label Leminates. It was their claim that they were wrongfully and illegally terminated. Therefore, they raised an industrial dispute which resulted into References Nos. 1293 of 1986 to 1306 of 1986, The Labour Court has passed the award on 3.1.97 by which he directed the reinstatement of the workman with 50 percent of back wages. The employer had come before the court to challenge that part of the award viz. awarding back wages of 50 percent. It is the contention of the employer that in the interregnum period, the employees were working with some other establishments and were gainfully employed and therefore, they were not entitled to claim and get any back wages . The employer had given an application before the Labour Court seeking the production of evidence of some persons with whom they were working. But said application was rejected by holding that it was filed at very late stage.

3. It is further the claim of the employer that after the award was passed in favour of the employees, they directed the workmen to join the duties as they wanted reinstatement . Though the workmen attended for few days, they abandoned the job thereafter. It is the claim of the petitioner that the workmen are not at all regular in work and they remain absent on and often.

4. As against this, the workmen have filed SCA No. 8733 of 1997. It is the contention of the employees that though the provisions of Minimum Wages are applicable to the industry in question, the employer is not paying the workers the minimum wages and very paltry wages are being paid to the workmen and therefore, they are not in a position to maintain themselves and their family members. It is also contended on behalf of the employees that the Labour Court had rightly rejected the application of the employer as the same was filed very late.

5. When the matter came up for hearing today, learned advocate for the employer made a statement that

the employer is ready and willing to pay them minimum wages from today. Learned advocate for the respondent Mr. Rathod submits that his clients will join the service and they will work . Now as regards the dispute regarding the claim of wages under the Minimum Wages Act, same could not be solved in this proceedings. It will be open for the workers to take appropriate proceedings for the same before the Labour Court and the Labour Court is to decide the same after giving opportunity to both sides and after hearing both sides. Learned advocate for the employer further submits before me that the workers are remaining absent from duty on and often. If such thing happens, it will be open for the employer to take appropriate proceedings against the workers for their misconduct. But it is not possible for this court to give any direction in respect of the same.

6 Admittedly as regards the back wages it is the claim of the employer that the workers were working since the date of passing of the award with others and they were having a regular source of income and therefore, the employees are not entitled to claim and get back wages. It is true that initially the employer had not given any application seeking summoning of witnesses and said application for summoning of witnesses was given at very late stage. But in view of the specific stand taken by the employer and when there is a question of paying thousands of rupees to the workers by such a small industrial unit like the petitioner, it would be just and proper to give opportunity to the industry to lead evidence to support their contention. I would therefore partly allow the writ petition filed by the employer and set aside only the term of the award by which the Labour Court has ordered to pay 50 percent back wages to the employees. The question of determination of payment of wages and the period for payment of back wages is kept open. The matter is remanded to the Labour Court to give opportunity to the parties to lead evidence as regards the payment of back wages and after considering the evidence of both sides and submission made before the Labour Court by both the sides, the Labour Court has to decide afresh the question as to whether the workers are entitled to back wages and if yes for what period and at what rate. Therefore, both the parties should approach the Labour Court on 10.8.98 so that time for issuing fresh notice can be saved and the Labour Court should decide these questions within six weeks from 10.8.1998. In view of the statement of the employer, minimum wages are to be paid to all workmen who are covered by the awards passed in Ref.Nos. 1293/86 to 1308/86, the

reinstatement of the workmen should be with continuity of service and the question of back wages is to be determined by the Labour Court as indicated above. Both the petitions are partly allowed. Rule is made absolute in the above terms in both the SCAs. No order as to costs in both SCAs.

(S.D.Pandit.J)